

**(1970) 08 PAT CK 0011**

**Patna High Court**

**Case No:** Civil Writ Jurdn. Case No. 1112 of 1970

Madan Sharma

APPELLANT

Vs

The Bihar School Examination  
Board and Others

RESPONDENT

---

**Date of Decision:** Aug. 7, 1970

**Acts Referred:**

- Bihar School Examination Board Act, 1952 - Section 17

**Citation:** AIR 1971 Patna 371

**Hon'ble Judges:** U.N. Sinha, J; S. Sarwar Ali, J

**Bench:** Division Bench

**Advocate:** Radha Raman Bijoy Kumar Roy and Man Mohan, for the Appellant; Ray Paras Nath and Chandra Bhusan Sahay, for the Respondent

**Final Decision:** Allowed

---

### **Judgement**

Sarwar Ali, J.

This is an application, under Articles 226 and 227 of the Constitution of India, for quashing the cancellation of petitioner's result of Higher Secondary School Examination of the year 1969, communicated to the petitioner through Annexure-2, which is a letter dated 27-4-1970 from the Principal of the Banshidhar Uchater Madhayamik Bidhyalay, Bharatpur (Patna) addressed to the petitioner.

2. The petitioner was a student of Banshidhar Uchatar Madhayamik Bidhayalay, Bharatpur (Patna) and appeared at the annual Higher Secondary School Examination for the year 1969. The examination was conducted by respondent No. 1, the Bihar School Examination Board (hereinafter referred to as the Board). The result of the examination was published by and under the authority of respondent No. 1. It was so published, amongst others, in the Hindi daily "Aryabrat" dated 14-8-1969. The petitioner was declared to have passed the examination in the third division. After the publication of the result the petitioner obtained the mark-sheet, a

copy of which has been made Annexure-1 to the petition and is dated 20-8-1969. Thereafter the petitioner on the basis of his having passed the examination aforesaid, got himself admitted to the first part of the three years" Degree Course in Arts in Altidhari College, Noubatpore, Patna. The petition states that, the petitioner having diligently prosecuted his studies in the College, is taking his final examination for Part I of three years" degree course which is scheduled to be held on 7-7-1970. All these facts are not denied by respondent No. 1.

3. The petitioner received a letter from the Principal of Banshidhar Uchar Madhayamik Bidhayalay, Bharatpur (Patna) on 27-4-1970, stating that according to the letter dated 23-4-1970 received by the Principal from respondent No. 1, the petitioner has been declared to have failed in the annual examination of the Board. The petitioner states that he was taken by complete surprise by the receipt of this letter and the unjust and arbitrary declaration made therein. The petitioner has not been given any opportunity to show cause before the cancellation of the result aforesaid. This violates the principles of natural justice and the action taken by respondent No. 1 is unjust and arbitrary. Representation was made by the petitioner to respondent No. 1 against the aforesaid action taken by respondent No. 1 and to undo the injustice to him. Having failed to receive any response, the petitioner has filed this application.

4. A show cause has been filed in this case on behalf of respondent No. 1, and its officers respondent Nos. 2 and 3 who are the Chairman and the Secretary of the Board. The gist of the show cause is that about fourteen boys of the same school and centre, who had appeared along with the petitioner, filed applications on various dates for the scrutiny of their answer books, particularly Hindi and English. The scrutiny resulted in discovery of a large number of discrepancies between the marks actually obtained and entered in the answer books of the examinees and the marks as entered in the tabulation registers. On a thorough check of the result, it was discovered that a number of students who had actually passed were shown as having failed in the examination and vice-versa. It was, therefore, necessary to revise the result and it was as a result of revision of the result aforesaid that the petitioner has been declared to have failed in the examination. The specific case of the respondents aforesaid is that it was not necessary to call for any explanation from the examinees concerned as they had not been alleged to have used unfair means at the examination. The action taken, therefore, was perfectly legal and valid.

5. Appearing for the petitioner Mr. Radha Raman submitted that the action taken by the respondents aforesaid was in clear violation of the principles of natural justice. The petitioner on the basis of a valid declaration of result by respondent No. 1 had taken admission in the College and had almost completed first year of the degree course at the time of filing of this writ application. He informed us that before the hearing of this application the petitioner had actually appeared in the first year examination of the three years" degree course. The respondents were not entitled

to revise the legally published result; and in any event, could not do so without giving an opportunity to the petitioner to show cause against the contemplated action. Mr. Ray Paras Nath for respondents 1 to 3 submitted that Clause 19 of the Regulation framed u/s 17-B of Bihar School Examination Board Act, 1952 (Act 7 of 1952) and the rules made thereunder authorised the revision of any result declared by the Board under the circumstances stated in the Regulation. The revision, therefore, is legal and valid. There was no question of violation of principles of natural justice as the petitioner had not been charged for having used unfair means and the cancellation of the result was only for correcting an error in respect of the first declaration of the result of the examination.

6. In reply Mr. Radha Roman contended that the Regulation aforesaid should be so construed as not to include a revision of the nature such as has been done in the present case. If, however, the Regulation permitted such an action, it was clearly ultra vires of the Act and the rules and was also violative of the fundamental rights guaranteed under the Constitution. He further reiterated that the requirements of natural justice cannot be dispensed with in a case of this nature.

7. Since I am of the view that the petition should be allowed on the ground that the cancellation of the result is bad being in violation of the principles of, natural justice, it is not necessary to deal with the other contention raised during the hearing of this petition.

8. Clause 19 of Bihar School Examination Board Regulations 1964, framed u/s 17 of the Bihar School Examination Board Act, 1952. is as follows :

"In any case where the results of the examination has been ascertained and published and it is found that such result has been affected by error, malpractice, fraud, or any other cause whereby an examinee has in the opinion of the Board been party to or privy to or connived at such mal-practice, fraud or improper conduct, the Board shall have power at any time, notwithstanding the issue of the certificate to amend the result of such examinee and to make such declaration as it may consider necessary in that behalf."

Mr. Ray Paras Nath submitted that this regulation authorised the amendment of the result of examinee even after the same has been declared and duly published, if the result has been affected by an error. In this case an error having been discovered by the Board the same has been corrected by cancellation of the result of the petitioner. It was not necessary to give any notice to the petitioner inasmuch as no useful purpose would have been served had a show cause notice been given to the petitioner. I am unable to accept these contentions- Consequent upon the declaration of the result, the petitioner had taken admission In three years degree course and had actually prosecuted his study and on conclusion of the academic year has now appeared in the final examination for part I. To cancel the result now may lead to very serious consequences and to borrow the phraseology used in

[Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others](#), may even result in blasting the career of young student for life. Requirement of show cause notice before taking any action in the circumstances, appears to be imperative. The contention of the Board that no useful purpose would have been served by issuance of such notice is unsustainable. Similar contention was raised in the case of [The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others](#), Sikri. J. in repelling the contention held:

"Whether a duty arises in a particular case to issue a show cause notice before inflicting the penalty does not depend on the authorities" satisfaction that the person to be penalised has no defence but in the nature of the order to be passed."

In this case had a show cause notice been given to petitioner he would have been entitled to show that in fact there was no error in the published result He would have also been entitled to satisfy the authorities that even if there was an error, in the circumstances of the case, it was not a fit case in which the Board should exercise its discretionary power of cancelling the result. The Regulation aforesaid is only enabling and does not require that in every case where an error is detected the same should be corrected irrespective of the consequences and irrespective of the effect of such a correction on the career of a student who on the basis of a duly published result, and without any fault on his part has prosecuted his studies. In the special circumstances of this case. I am of the view that the order of the Board is fit to be quashed for violation of principles of natural justice.

9. The view that I have taken is in accord with the decisions in [Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others](#), and [The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others](#), referred to above.

10. In Ghanshyam Das's case the Board of High School and Intermediate Education U. P. had cancelled the result of an examinee who was alleged to have used unfair means at the examination. This was done without any show cause notice to him, after the result had been duly published. It was held that (a) in cancelling the result the Board was acting in a quasi judicial capacity, (b) the absence of show cause notice constituted a violation of principles of natural justice. Similarly in Kumari Chittra Srivastava's case, the petitioner to the writ application (respondent in the Supreme Court) had been permitted to appear at the examination and had in fact so appeared. The Board, on the view, that she had been wrongly permitted to appear at the examination, cancelled the examination and did not declare the result. The action of the Board was challenged. It was held that in cancelling the examination the Board was acting in a quasi judicial capacity; and further that the petitioner, not having been given an opportunity to show cause before the cancellation the order of the Board was fit to be quashed.

11. Learned counsel for the Board placed reliance on the decision of the [The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others](#), . In this case, the Board being satisfied that unfair means was practised on large scale at Hanswadih Centre in the Secondary School examination held in 1969. cancelled the examination without notice to the examinees who had appeared at that Centre. It was held that in so cancelling there was no violation of principles of natural justice. There are several distinguishing features between the case under consideration of Supreme Court and the instant case. Firstly, the action was not taken after a due publication of the result, and secondly, as pointed out by the Supreme Court, the case under their consideration was not a case of a particular individual but of the conduct of all the examinees or at least a vast majority of them at a particular centre. Explaining the decision in Ghanshyam Das Gupta's case their Lordships pointed out:

".....Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practised on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say. What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of examinees had not conducted themselves as they should have. To make such decision depend upon a full-fledged Judicial inquiry would hold up the functioning of such autonomus bodies as Universities and School Board While we do not wish to whittle down the requirements of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different ... .."

It would thus be seen that the case relied upon by Mr. Ray Paras Nath is not applicable to the facts of the case under consideration.

12. In the result, I am of the view that the cancellation of the result of the petitioner in Higher Secondary School Examination of the year 1969, in which examination the petitioner was declared to have passed, and which cancellation was communicated to the petitioner under Annexure-2 has to be quashed - and I would order accordingly. No useful purpose will be served by directing that the petitioner be given an opportunity to be heard afresh, thus continuing the controversy for another considerable time. As there is no allegation of any malpractice against the petitioner, the declaration made in August 1969 that the petitioner had been successful in the examination in question will remain effective.

13. In the circumstances of the case, there will be no order as to costs.

U.N. Sinha, J.

14. I agree.